

Customs Bulletin

Regulations, Rulings, Decisions, and Notices
concerning Customs and related matters



and Decisions

of the United States Court of Appeals for
the Federal Circuit and the United
States Court of International Trade

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This issue contains:

U.S. Customs Service

T.D. 87-44 (Clarifying Amendment)

T.D. 87-75 (Correction)

Proposed Rulemaking

U.S. Court of International Trade

Slip Op. 87-71

Abstracted Decisions:

Classification: C87/70 Through C87/84

Valuation: V87/205 Through V87/216

Appeals to the CAFC

Decisions of the CAFC

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

19 CFR Parts 4, 24, 146 and 179

(T.D. 87-44)

HARBOR MAINTENANCE FEE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Clarifying amendent of interim regulations.

SUMMARY: This notice clarifies interim amendments of the Customs Regulations to implement provisions of the Water Resources Development Act of 1986 (the Act) which authorizes the Customs Service to assess a harbor maintenance fee of 0.04 percent (.0004) on the value of commercial cargo loaded on or unloaded from a commercial vessel at a port within the definition of the Act. The harbor maintenance fee applies to port uses by commercial vessels which load or unload merchandise or passengers unless specifically exempted from the fee. The proceeds of the fee collected by Customs, together with certain other fees, are deposited in the Harbor Maintenance Trust Fund which is made available, subject to appropriations, to the U.S. Army Corps of Engineers for the improvement and maintenance of U.S. ports and harbors.

The amendments were made on an interim basis by the publication of T.D. 87-44 in the Federal Register of March 30, 1987 (52 FR 10198), due to the limited period of time available to initiate the changes before the law became effective on April 1, 1987. However, written comments were invited for consideration before a final rule is issued. Comments were to have been received on or before May 29, 1987. In response to several requests to extend the comment period, by notice published in the Federal Register on June 2, 1987 (52 FR 20593), the comment period was extended to August 28, 1987.

Both Customs and the Army Corps of Engineers have received numerous inquiries concerning the ports, channels, and harbors subject to the fee. To assist users, the list of ports has been reformatted. No new ports have been added and the use of Customs port codes to help describe ports has not changed.

DATES: Effective upon publication. Comments are requested on or before August 28, 1987.

ADDRESS: Comments may be submitted to and inspected at the Regulations Control Branch, U.S. Customs Service, Room 2324, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

All comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), between 9:00 a.m. and 4:30 p.m. on normal business days, at the address above.

FOR FURTHER INFORMATION CONTACT: Jean F. Maguire, Director, User Fee Task Force (202-566-5868).

AMENDMENT

Title 19, Code of Federal Regulations, Chapter I, is amended as follows:

In § 24.24(b)(1), the list of ports is revised as follows:

§ 24.24(b)(1) [Amended].

PORT CODES, NAMES, AND DESCRIPTIONS OF PORTS SUBJECT TO SECTION 1402 OF P.L. 99-662

HARBOR MAINTENANCE FEE

Port Code, port name, and state

Port descriptions and notations

Alaska

3126—Anchorage
3106—Dalton Cache
3102—Ketchikan
3127—Kodiak
3112—Petersburg
3125—Sand Point
3115—Sitka

Alabama

1901—Mobile

California

2802—Eureka Includes Crescent City.
Los Angeles/Long Beach Port Includes Dana Point; movements
2709—Long Beach Harbor between these locations are intraport.
2704—Los Angeles
2713—Port Hueneme Includes Channel Island Harbor.
2501—San Diego Includes Oceanside Harbor.
2707—San Luis

Port Code, port name, and state

Port descriptions and notations

California—continued

San Francisco Bay Area Ports*	Includes all points inshore of the Golden Gate Bridge on the bays and the straits on the Napa, Sacramento, and San Joaquin Rivers, and on the deep water channels to Sacramento and Stockton. Movements between points above Suisun Bay (Longitude 122 degrees West at Port Chicago), are intraport. Movements between points below Longitude 122 degrees West are intraport. All other movements are interport.
2813—Alameda	
2830—Carquinez Strait	
2815—Crockett	
2820—Martinez	
2811—Oakland	
2821—Redwood City	
2812—Richmond	
2816—Sacramento	
2809—San Francisco	
2828—San Joaquin	
2829—San Pablo Bay	
2827—Selby	
2810—Stockton	
2831—Suisun Bay	

Connecticut

0410—Bridgeport	Includes Housatonic River, and Stamford Harbor.
0411—Hartford	Includes all points on the Connecticut River between Hartford and Long Island Sound.
0412—New Haven	
0413—New London	

District of Columbia

Potomac River Ports, DC, MD, & VA*	Includes all points on the Potomac River (see Chesapeake Bay Ports, MD and VA map) from a line between Point Lookout and the Little Wicomico River at Chesapeake Bay to and including Washington and Alexandria. Movements between these points are intraport.
5402—Alexandria, VA	
5401—Washington, DC	

Delaware

Delaware River Ports, DE, NJ, PA*	Includes all points on the Delaware River from Trenton to the sea at a line between Cape Henlopen and Cape May, all points on the lower four miles of the Christina River, Delaware, and all points on the lower six miles of the Schuylkill River, Pennsylvania. Includes movements on the Chesapeake & Delaware Canal east of Delaware State Highway 13. Movements between these points are intraport.
1102—Chester, PA	
1107—Camden, NJ	
1113—Gloucester, NJ	
1118—Marcus Hook, PA	
1105—Paulsboro, NJ	
1101—Philadelphia, PA	
1103—Wilmington, DE	

Florida

1807—Boca Grande	
1806—Carabelle	
1805—Fernandina Beach	
5205—Fort Pierce	
1803—Jacksonville	
5202—Key West	

Port Code, port name, and state

Port descriptions and notations

Florida—continued

5201—Miami

1818—Panama City

1819—Pensacola

5203—Port Everglades

1820—Port St. Joe

Tampa Bay Ports* Includes Alafia River, Port Manatee, Port Sutton, Port Tampa, Weedon Island and all other points on or approached using the Tampa Harbor Channel inshore of the Sunshine Skyway Bridge. Movements between these points are intraport.

1814—St. Petersburg

1801—Tampa

5204—West Palm Beach

Georgia

1701—Brunswick Includes St. Marys River.

1703—Savannah

Hawaii

3202—Hilo

3201—Honolulu

3203—Kahului Includes Kaunakakai Harbor.

3204—Nawiliwili-Port Allen

Illinois

Chicago Area Ports* Includes Indiana Harbor; does not include Buffington Harbor.

3901—Chicago

3904—East Chicago, IN

Indiana

3905—Gary Includes only Michigan City and Burns Waterway Harbor. Fee does not apply at Gary.

3905—East Chicago* See Chicago Area Ports, Illinois.

Louisiana

2017—Lake Charles

Mississippi River Ports:

Baton Rouge and Vicinity* Includes all river points from River Mile 115 Above Head of Passes (AHP) at the St. Charles Parish-Jefferson Parish line, to River Mile 233.9 AHP at Baton Rouge. Movements between these points are intraport.

2004—Baton Rouge

2009—Destrehan

2010—Gramercy

2014—Good Hope

2013—St. Rose

Mississippi River Ports:

New Orleans and Vicinity* Includes all river points from River Mile 115 AHP to Mile 21.8 BHP (Below Head of Passes) via Southwest Pass and to Mile 14.7 BHP via South Pass. Also includes all points on the Inner Harbor Navigation Canal and the Mississippi River Gulf Outlet. Movements between these points are intraport.

2012—Avondale

2002—New Orleans

2005—Port Sulphur

Port Code, port name, and state

Port descriptions and notations

Mississippi River Ports—continued

2001—Morgan City* Includes Houma and points on the Gulf Intracoastal Waterway between Mile 49.8 West and Mile 107.0 West. Movements between these points are intraport.

Maine

0102—Bangor

0111—Bath

0132—Belfast Includes Penobscot River points (Bucksport and Winterport); fee does not apply at Belfast, Sandy Point, or Castine Harbor.

0101—Portland

Maryland

Chesapeake Bay Ports: Maryland* Includes all Maryland points on Chesapeake Bay and its tributary waters except for the Potomac River. Also includes the Waterway from Delaware River to Chesapeake Bay west of U.S. 13 highway bridge. Movements between these points are intraport. (*Also see* Chesapeake Bay Ports: VA.)

1303—Baltimore

1302—Cambridge

Massachusetts

0401—Boston* Includes all of the Port of Boston inshore of Castle Island on the Inner Harbor and Chelsea and Mystic Rivers, and all points on the Weymouth Fore, and Town Rivers. Movements between points on the Saugus River in the north to Scituate in the south are intraport.

0404—Gloucester

0407—Fall River

Michigan

3843—Alpena Fee does not apply at Stoneport.

3801—Detroit

3844—Ferryburg

3816—Grand Haven

3809—Marquette

3815—Muskegon Includes Pentwater Harbor and South Haven Harbor.

3802—Port Huron Includes Port Huron and all points on the St. Clair and Black Rivers in St. Clair County. Also includes Harbor Beach, Michigan.

3842—Presque Isle

3804—Saginaw-Flint-Bay City Does not include Alabaster.

Port Code, port name, and state

Port descriptions and notations

Michigan—continued

3803—Sault Ste Marie..... Does not include Port Dolomite or Port Inland, Michigan; does include Manistique, Michigan, and Grand Marais Harbor, Michigan.

Minnesota

Duluth/Superior Includes Duluth, MN and Superior, WS; movements between these ports is intraport.
 3601—Duluth, MN
 3608—Superior, WS
 3614—Silver Bay Fee applies only at Grand Marais.

Mississippi

1902—Gulfport
 1903—Pascagoula

New Hampshire

0131—Portsmouth

New Jersey

1107—Camden See Delaware River Ports.
 1113—Gloucester See Delaware River Ports.
 1105—Paulsboro See Delaware River Ports.
 1003—Newark See New York Harbor.
 1004—Perth Amboy See New York Harbor.

New York

New York Harbor, NY, NJ* Includes all points in New York and New Jersey within the Port of New York on the waters inshore of a line between Sandy Hook and Rockaway Point and south of Tappan Zee Bridge on the Hudson and west of Throgs Neck Bridge on the East River. Movements between all points within the New York Port District boundaries described in New York Code (Chapter 154, Laws of New York, 1921), are intraport.
 1002—Albany* Includes all points on the Hudson River between Tappan Zee Bridge and the Troy Lock and Dam.
 0901—Buffalo-Niagara Falls Includes Cattaraugus Creek.
 0706—Cape Vincent
 0701—Ogdensburg
 0904—Oswego
 0903—Rochester
 0905—Sodus Point Includes Little Sodus Bay Harbor.

North Carolina

1511—Beaufort-Morehead City
 1501—Wilmington Includes all points on the Cape Fear and Northeast Cape Fear Rivers inshore of the Atlantic Ocean entrance. Movements between these points are intraport.

Port Code, port name, and state

Port descriptions and notations

Ohio

4108—Ashtabula(or Port Code 4122)
 4101—Cleveland
 4109—Conneaut.....(or Port Code 4122)
 4111—Fairport
 4117—Huron
 4121—Lorain
 4105—Toledo-Sandusky

Oregon

Columbia River Ports, OR, WAIncludes all points on the Columbia
 2901—Astoria, OR River downstream of Bonneville Dam,
 2904—Portland, OR and all points on the Willamette
 2909—Kalama, WA River downstream of River Mile 21.
 2905—Longview, WA Movements between these points are
 2908—Vancouver, WA intraport.
 2903—Coos BayIncludes Port Orford.
 2902—NewportIncludes Tillamook Bay.

Pennsylvania

1102—ChesterSee Delaware River Ports.
 4106—Erie
 1118—Marcus HookSee Delaware River Ports.
 1101—Philadelphia.....See Delaware River Ports.

Puerto Rico

4907—Mayaguez
 4908—Ponce
 4909—San Juan

Rhode Island

0502—Providence

South Carolina

1601—Charleston
 1602—Georgetown

Texas

2301—Brownsville
 5312—Corpus Christi
 5311—Freeport
 Galveston Bay Ports*Includes Port Bolivar and all points on
 5310—Galveston Galveston Bay in Galveston County.
 5306—Texas City Movements between these points are
 intraport.
 5301—Houston*Includes Bayport, Baytown, and all
 other points on or accessed via the
 Houston Ship Channel north of the
 Galveston County line. Movements
 between these points are intraport.
 5313—Port Lavaca

Port Code, port name, and state

Port descriptions and notations

Texas—continued

Sabine Ports*	Includes Port Neches, Sabine Pass and all other points on the Sabine-Neches Waterway. Movements between these points are intraport.
2104—Beaumont	
2103—Orange	
2101—Port Arthur	
2102—Sabine	

Virginia

5402—Alexandria*	See District of Columbia, Potomac River Ports.
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Chesapeake Bay Ports: Virginia*	Includes all Virginia points on Chesapeake Bay inshore of a line from Cape Henry to Cape Charles, and tributary waters including the ports of Hampton Roads. Does not include the Potomac River or the James River above the James River Bridge at Newport News. Movements between these points are intraport. (Also see Chesapeake Bay Ports: MD).
1406—Cape Charles	
1402—Newport News	
1401—Norfolk	

James River Ports, VA*	Includes all points on the James River above the James River Bridge at Newport News. Movements between these points are intraport.
1408—Hopewell	
1404—Richmond-Petersburg	

Washington

3003—Aberdeen	
Puget Sound Ports, WA*	Includes only the ports listed. Movements between these ports or any other U.S. points on Puget Sound or the Strait of Juan de Fuca east of Cape Flattery are intraport.
3005—Bellingham	
3006—Everett	
3026—Olympia	
3007—Port Angeles	
3001—Seattle	
3002—Tacoma	
2909—Kalama	See Columbia River Ports, OR.
2905—Longview	See Columbia River Ports, OR.
2908—Vancouver	See Columbia River Ports, OR.

Wisconsin

3602—Ashland	Includes Port Wing.
3706—Manitowoc	Includes Two Rivers and Kewaunee.
3702—Marinette	Includes Oconto.
3701—Milwaukee	
3708—Racine	
3707—Sheboygan	
3608—Superior	See Duluth/Superior, MN.

*Indicates that a map of this port area is available from the U.S. Customs Service.

Note: The port codes shown in the above listing are those of the U.S. Customs Service.

Dated: July 7, 1987.

HARVEY B. FOX,
Director, Office of
Regulations and Rulings.

[Published in the Federal Register, July 14, 1987 (52 FR 26297)]

19 CFR Parts 4, 6, 10, 18, 19, 54, 123, 141, 143, 144, 145

(T.D. 87-75)

**ELIMINATION OF VARIOUS CUSTOMS FORMS AND CERTAIN
INFORMATION COLLECTION REQUIREMENTS; CORRECTION**

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule; correction.

SUMMARY: In FR Doc. 87-12255, published as T.D. 87-75 on May 29, 1987 (52 FR 20064), numerous changes were made to sections of the Customs Regulations to eliminate Customs forms that are obsolete and to eliminate information collection requirements that are obsolete or unduly burdensome. One of the forms eliminated, Customs Form 5119-A, Informal Entry, has two versions—a serially numbered and a non-serially numbered. It was intended to eliminate only the non-serially numbered version. However, that qualifying phrase was omitted from the document thereby giving the impression that both versions are being eliminated. This document clarifies that only the non-serially numbered version of Customs Form 5119-A is being eliminated.

EFFECTIVE DATE: June 29, 1987.

FOR FURTHER INFORMATION CONTACT: Charles Bartoldus, Office of Cargo Enforcement and Facilitation (202-566-8151).

SUPPLEMENTARY INFORMATION:

BACKGROUND

T.D. 87-75, published in the Federal Register on May 29, 1987 (52 FR 20064), made numerous changes to the Customs Regulations to eliminate Customs forms that are obsolete and to eliminate information collection requirements that are obsolete or unduly burdensome.

Customs Form 5119-A, Informal Entry, is used by importers to enter low value merchandise. There are two versions of Customs Form 5119-A, a serially numbered and a non-serially numbered. As explained in T.D. 87-75, Customs has revised the Customs Form 7501, Entry Summary, so that it can be used for both formal as well as informal entries. Accordingly, Customs Form 7501 can replace Customs Form 5119-A, but only the non-serially numbered version. The serially numbered version of Customs Form 5119-A is still a necessary form used by Customs as an entry document and to collect duty.

Since it was intended to eliminate only the non-serially numbered version of Customs Form 5119-A, but that qualifying phrase was inadvertently omitted, it created the impression that both versions were being eliminated. To correct that impression, the following corrections are made to T.D. 87-75.

CORRECTIONS

1. On page 20064, second column, paragraph numbered "1", fourth sentence, "(non-serially numbered)" is inserted immediately after "Customs Form 5119-A".

2. On page 20066, in the amendments to Part 6, the following is substituted for paragraph number "2":

2. Section 6.7(b)(3)(ii) is amended by inserting "(serially numbered) or Customs Form 7501", immediately after "5119-A".

3. On page 20066, in the amendments to Part 10, the following is substituted for paragraph number "18":

18. Section 10.71(f) is amended by inserting "(serially numbered) or an entry summary (Customs Form 7501)", immediately after "5119-A".

4. On page 20068, in the amendments to Part 123, the following is substituted for paragraph number "2":

2. Section 123.4(b) is amended by inserting "(serially numbered) or Customs Form 7501" immediately after "5119-A".

5. On page 20068, in the amendments to Part 141, the following is substituted for paragraph number "5":

5. Section 141.68(h) is amended in the following manner:

(a) In the first sentence, "or informal entry" is added immediately after "appraisement entry", and "(serially numbered)" is added immediately after "5119-A".

(b) In the second and third sentences, "(serially numbered)" is added immediately after "5119-A".

6. On page 20068, in the amendments to Part 143, the following are substituted for paragraph numbers 2, 3, and 4:

2. In § 143.23, the introductory text is amended by inserting "(serially numbered) or Customs Form 7501" immediately after "5119-A".

3. Section 143.24 is amended in the following manner:

(a) In the section heading, "(Serially Numbered)" is added immediately after "5119-A".

(b) In the second sentence of the section, "(serially numbered) or Customs Form 7501" is inserted immediately after "5119-A".

4. Section 143.25 is amended by inserting "(serially numbered)" immediately after "5119-A".

7. On page 20068, in the amendments to Part 145, the following are substituted for paragraph numbers 2 and 3:

2. Section 145.4(c) is amended by inserting "(serially numbered) or 7501" immediately after "5119-A".

3. Section 145.12 is amended in the following manner:

(a) In paragraph (b)(1), "(serially numbered) or an entry summary (Customs Form 7501" is inserted immediately after "5119-A".

(b) In paragraph (c), "(serially numbered) or Customs Form 7501" is inserted immediately after "5119-A".

(c) In paragraph (e)(1), "(serially numbered) or entry summary, Customs Form 7501" is inserted immediately after "5119-A."

Dated: July 1, 1987.

B. JAMES FRITZ,
*Director, Regulations Control
and Disclosure Law Division.*

[Published in the Federal Register, July 13, 1987 (52 FR 26141)]



U.S. Customs Service

Proposed Rulemaking

19 CFR Part 7

PROPOSED INTERPRETIVE RULE RELATING TO DETERMINING DUTY-FREE STATUS FOR PRODUCTS IMPORTED FROM U.S. INSULAR POSSESSIONS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed interpretive rule; solicitation of comments.

SUMMARY: General Headnote 3(a), Tariff Schedules of the U.S. (TSUS), provides for the free entry into the U.S. of products of its insular possessions which do not contain foreign materials to the value of more than 70 percent of their total value or more than 50 percent of their total value if the articles are ineligible for duty-free entry under the Caribbean Basin Initiative (CBI). The CBI and the Generalized System of Preferences (GSP) provide generally for free entry into the U.S. of eligible articles from beneficiary or beneficiary developing countries (BDC's), respectively, if, among other requirements, the articles are products of the beneficiary country or BDC and the sum of the cost or value of the materials produced in the beneficiary country or BDC plus the direct costs of processing operations performed in the beneficiary country or BDC are not less than 35 percent of the appraised value of the articles at the time of their entry into the U.S. For both CBI and GSP, Customs has permitted double substantial transformation; that is, the value of foreign material (generally, material that originates in a non-beneficiary country or non-BDC) may be considered as the cost of material produced in the beneficiary country or BDC for the purpose of the 35 percent value determination if the foreign material is transformed in the beneficiary country or BDC through a substantial processing operation into a new and different product with a different name, use or character, and the new and different product is then transformed into yet another new and different product which is exported to the U.S.

This document requests comments regarding Customs proposal to apply the double substantial transformation concept to products of insular possessions for the purpose of determining whether the products meet the value requirement entitling them to free entry under General Headnote 3(a).

DATE: Comments must be received on or before August 12, 1987.

ADDRESS: Comments (preferably in triplicate) may be addressed to, and inspected at, the Regulations Control Branch, Room 2426, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Daniel Gluck, Classification and Value Division (202-566-2938).

SUPPLEMENTARY INFORMATION:

BACKGROUND

CBI AND GSP

The Caribbean Basin Initiative (CBI) is an economic recovery program for nations of the Caribbean and Central America created by the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701 *et seq.*) Under the program, most products imported from Caribbean and Central American countries designated as beneficiary countries may be entered into the U.S. free of duty. Certain products such as textile and apparel articles subject to textile agreements and petroleum are not eligible under CBI for duty-free treatment. To implement the duty-free aspects of the CBI, by T.D. 84-237, published in the Federal Register on December 7, 1984 (49 FR 47986), the Customs Regulations were amended by adding new §§ 10.191 through 10.198 (19 CFR 10.191-10.198).

Title V of the Trade Act of 1974 (19 U.S.C. 2461 *et seq.*) authorized the President to establish a Generalized System of Preferences (GSP) which permits the duty-free entry of eligible merchandise arriving from designated beneficiary developing countries (BDC's). Most of the products which would not be eligible for duty-free treatment under CBI also would not be eligible for duty-free treatment under GSP. To implement the provisions of GSP, by T.D. 76-2, published in the Federal Register on December 31, 1975 (40 FR 60047), the Customs Regulations were amended by adding new §§ 10.171-10.178 (19 CFR 10.171-10.178).

The statutory language enacting GSP provides generally, in 19 U.S.C. 2463, that a GSP-eligible product may be entitled to duty-free treatment if the sum of the costs or value of the materials produced in a BDC, plus the direct costs of processing operations performed in such country, is not less than 35 percent of the appraised value of such article at the time of its entry into the customs territory of the U.S. The statutory language enacting CBI provides generally, in 19 U.S.C. 2703, that a CBI-eligible product may be entitled

to duty-free treatment if the sum of the cost or value of the materials produced in a beneficiary country plus the direct costs of processing operations performed in a beneficiary country is not less than 35 percent of the appraised value of such article at the time it is entered.

Customs has interpreted these provisions in GSP and CBI to allow the value of foreign materials (generally, materials originating in a non-beneficiary country or non-BDC) imported into a beneficiary country or BDC to be counted in determining the cost or value of the materials produced in the beneficiary country or BDC if the foreign materials are transformed there into a new and different article of commerce with a different name, character, or use, and that new article is transformed into another new and different product which is exported to the U.S. This processing of foreign material into materials which costs may be included in determining the 35 percent value requirement established for GSP and CBI is popularly known as a "double substantial transformation."

INSULAR POSSESSIONS

General Headnote 3(a), Tariff Schedules of the U.S. (19 U.S.C. 1202), permits products of the insular possessions of the U.S. to be imported into the U.S. free of duty if certain qualifications are met. The insular possessions include the U.S. Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, Midway Islands, Wake Island, Johnston Island, and Kingman Reef. The purpose of General Headnote 3(a) is to promote the economic development of the insular possessions. Regulations concerning the insular possessions are set forth in Part 7, Customs Regulations (19 CFR Part 7).

Duty-free entry is provided for products of the insular possessions if the products do not contain foreign materials to the value of more than 70 percent of their total value or more than 50 percent of their total value if the articles are ineligible for duty-free entry under the CBI. All products of the insular possessions are eligible for duty-free treatment under General Headnote 3(a).

APPLICATION OF DOUBLE SUBSTANTIAL TRANSFORMATION TO INSULAR POSSESSIONS

Customs is now proposing to apply the double substantial transformation concept to products of insular possessions for the purpose of determining whether products meet the value requirement entitling them to free entry under General Headnote 3(a). It appears that no substantive difference was intended between the foreign material value limitation of General Headnote 3(a) and the eligible country material/direct costs of processing requirement found in the CBI or GSP (except for the intentionally more favorable 30 percent local content requirement that results under General Headnote 3(a)).

Double substantial transformation has not been applied to General Headnote 3(a) situations to date, principally because the question had not been presented. While many articles imported duty-free from insular possessions have been comprised entirely of foreign materials, the processing costs and other value added in the possession has increased the appraised value to the point where the value of the foreign material fell within the 70 or 50 percent value limitation.

Customs is now faced with the issue because particular cases have been presented in which the cost of the foreign material imported into the insular possession for further processing is so high that the costs of the substantial processing that occurs in the insular possession will not, because of the highly competitive market in the products involved, result in an appraised value sufficiently high to allow the foreign material value limitation to be met. The particular products involved are ones that would not be eligible for duty-free treatment under the CBI. Accordingly, for these products to be entitled to duty-free entry under General Headnote 3(a), the value of foreign materials in them cannot be more than 50 percent of their total value. If the double substantial transformation concept is applied to these products, foreign materials (materials not originating in an insular possession) that are transformed into new and different products in an insular possession and then transformed again in that insular possession to yet another new and different product which is imported into the U.S., would not be considered foreign materials for the purpose of the 50 percent value determination. The cost or value of the foreign materials would be considered as part of the value of materials produced in an insular possession.

COMMENTS

Before making a determination on this matter, Customs will consider any written comments timely submitted. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11, Customs Regulations (19 CFR 103.11(b)), between 9:00 a.m. and 4:30 p.m. on normal business days, at the Regulations Control Branch, Room 2426, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, D.C. 20229. Because the proposed action by Customs is consistent with past administrative practice regarding CBI and GSP, the period of time for public comment is set at 30 days. However, this time will be extended for good cause shown.

AUTHORITY

This notice is published in accordance with § 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

DRAFTING INFORMATION

The principal author of this document was Harold M. Singer, Regulations Control Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

MICHAEL H. LANE,

Acting Commissioner of Customs.

Approved: June 22, 1987.

JOHN P. SIMPSON,

Acting Assistant Secretary of Treasury.

[Published in the Federal Register, July 13, 1987 (52 FR 26154)]



United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

Chief Judge

Edward D. Re

Judges

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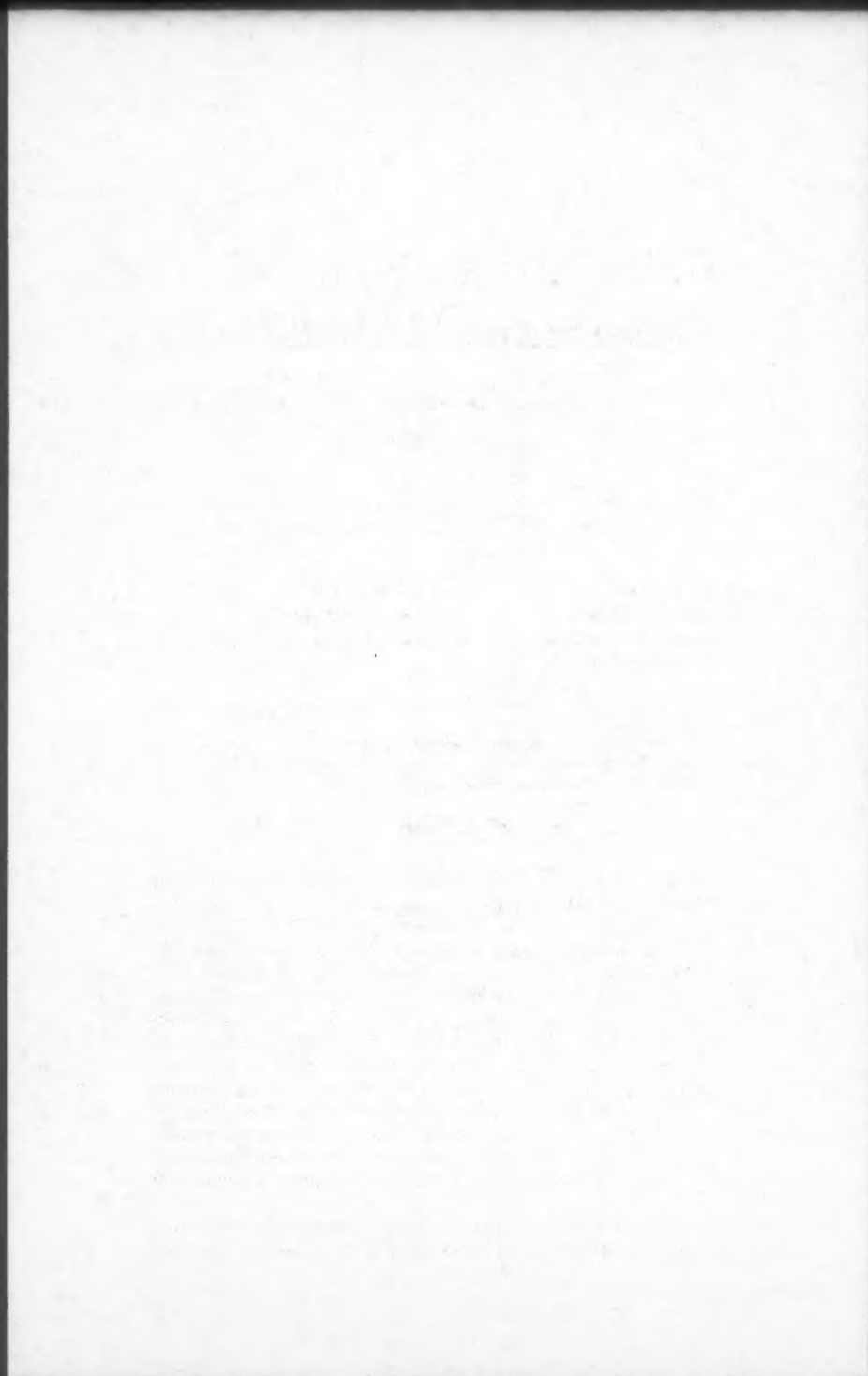
Bernard Newman

Samuel M. Rosenstein

Nils A. Boe

Clerk

Joseph E. Lombardi



Decisions of the United States Court of International Trade

(Slip Op. 87-71)

CABOT CORP., PLAINTIFF V. UNITED STATES, DEFENDANT, HULES MEXICANOS,
S.A. AND NEGROMEX, S.A. DE C.V., DEFENDANT-INTERVENORS

Court No. 86-09-01109

Before CARMAN, *Judge*.

[Defendant-intervenors' motion to augment the administrative record denied.]

(Decided June 22, 1987)

Stewart and Stewart, (Eugene L. Stewart, Terence P. Stewart and William A. Fennell on the motion) for the plaintiff.

Richard K. Willard, Assistant Attorney General; *David M. Cohen*, Director, Commercial Litigation Branch (*Sheila N. Ziff* on the motion) for the defendant.

O'Conner and Hannan, (*Andrew Jaxa-Debicki* on the motion) for the defendant-intervenors.

MEMORANDUM OPINION

CARMAN, *Judge*: This is a consolidated action challenging the final results of an administrative review by the International Trade Administration (ITA or Commerce) pursuant to section 751 of the Tariff Act of 1930, as amended by the Trade and Tariff Act of 1984, 19 U.S.C. § 1675 (§ 751 administrative review). The determination sought to be reviewed is *Carbon Black From Mexico; Final Results of Countervailing Duty Administrative Review*, 51 Fed. Reg. 30385 (August 26, 1986). Defendant-intervenors, Hules Mexicanos, S.A. (Hules) and Negromex, S.A. de C.V. (Negromex) move to augment the administrative record to include the ITA's verification report, completed pursuant to this Court's remand order in *Cabot Corp. v. United States*, 9 CIT —, 620 F.Supp. 722 (1985), *appeal dismissed*, 788 F.2d 1539 (Fed. Cir. 1986). The *Cabot* decision involved a challenge of the final affirmative countervailing duty determination by the ITA.

On December 10, 1986, plaintiff, Cabot Corporation (Cabot), moved to strike paragraphs numbered 15 and 16 in the complaint of

Hules and Negromex.¹ These paragraphs referred to the findings of the ITA during the verification conducted pursuant to the Court's remand order in the *Cabot* decision. The Court, on January 13, 1987, denied the motion.

Defendant-intervenors contend that since this Court denied the motion of Cabot to strike paragraphs 15 and 16, the verification report is now part of the record of this case. The intervenors maintain that for purposes of consistency, this Court should formally declare the verification report as part of the administrative record. The Court disagrees. Upon reconsideration of the issues involved, the Court holds the verification report is not properly part of the record in this proceeding.

The administrative record is defined by statute as follows:

(A) In general.—For the purposes of this subsection, the record, unless otherwise stipulated by the parties, shall consist of—

(i) a copy of all information presented to or obtained by the Secretary, the administering authority, or the Commission *during the course of the administrative proceeding*, including all governmental memoranda pertaining to the case and the record of ex parte meetings required to be kept by section 1677f(a)(3) of this title; and

(ii) A copy of the determination, all transcripts or records of conferences or hearings, and all notices published in the Federal Register.

19 U.S.C. § 1516a(b)(2)(A) (emphasis added). The important phrase in this provision is "during the course of the administrative proceeding." Congress shed light on the meaning of this term when it stated:

Scope and standard of review.—Judicial review of determinations subject to the provisions of subsection (a)(1) would proceed upon the basis of information *before the relevant decision-maker at the time the decision was rendered* including any information that has been compiled as part of the formal record. The court is not to conduct a trial *de novo* in reviewing such determinations.

S. Rep. No. 96-249, 96th Cong., 1st Sess. 247-48 (1979) (emphasis supplied). It therefore appears that Congress intended to limit the scope of the record for review to those matters considered in the particular determination challenged.

In *Beker Industries Corp. v. United States*, 7 CIT 313 (1984), which was predicated upon an action seeking review of the results of a § 751 administrative review, the Court considered a motion to add documents and information to the administrative record. The docu-

¹ This case involves two separate actions that were consolidated and redesignated by this Court on October 20, 1986. The first action, Court No. 86-09-01109 was commenced by the plaintiff, Cabot, on September 5, 1986. The second action, Court No. 86-09-01211 was commenced by Hules and Negromex on September 25, 1986. Both actions contest the final results of the § 751 administrative review by Commerce. The actions were consolidated because they arise from the same administrative record and involve common questions of law and fact.

ments and information related to three companies. The material was neither included nor considered in the particular administrative review being challenged. In addition, the three companies, while part of the original antidumping finding, were subjects of an entirely separate § 751 administrative review. In reviewing the statute and legislative history, the *Beker* Court concluded:

The court finds it impossible to read this passage in any sense but a limiting one. The scope of the record for purposes of judicial review is based upon information which was 'before the relevant decision-maker' and was presented and considered 'at the time the decision was rendered.'

Beker, 7 CIT at 315. In denying the motion to augment the administrative record, the *Beker* court held:

The information with which plaintiff attempts to augment the record here derives from unrelated proceedings (different administrative reviews), although the same original antidumping order is involved. An attempt to supplement the record now in the fashion attempted by plaintiff is tantamount to seeking *de novo* review through the back door.

Beker, 7 CIT at 317. See also *Bethlehem Steel Corp. v. United States*, 5 CIT 236, 566 F.Supp. 346 (1983) (material from contemporaneous investigations of steel products from other countries not part of the administrative record); *Nakajima All Co., Ltd. v. United States*, 2 CIT 25 (1981) ("information newly determined to be relevant" not part of the administrative record); *Melamine Chemicals, Inc. v. United States*, 2 CIT 113, 116 (1981) ("there is no discernable intent that the record for judicial review consist of unrelated proceedings not raised during the particular administrative action under review").

Just as the *Beker* Court held, this Court holds that the verification report which the defendant-intervenors seek to include within the record derives from an unrelated proceeding (a remand directed pursuant to a challenge of the final affirmative countervailing duty determination). Although both proceedings involve the same countervailing duty order, and the verification report is arguably material in this review, both proceedings are separate and subject to separate judicially reviewable determinations.

Furthermore, despite the identical nature of the two proceedings, the Court holds that the verification report which the defendant-intervenors seek to include within the administrative record of this case was not "before the relevant decision-maker at the time the decision was rendered." The final results of the § 751 administrative review were transmitted for signing to Deputy Assistant for Import Administration, Gilbert K. Kaplan on August 7, 1986 which was prior to the time the verification was performed. Furthermore, the final results were issued on August 20, 1986, which was one day before the verification report was issued. It therefore appears by

virtue of the timing of the proceedings that the ITA could not have considered the verification report when it rendered its decision.

In sum, the defendant-intervenors' attempt to augment the administrative record of this case is, in the words of the *Beker* Court, "tantamount to seeking *de novo* review through the back door." 7 CIT at 317. Accordingly, the defendant-intervenors' motion is denied.

ABSTRACT

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.
C87/70	Tsoulalas, J. May 12, 1987	CR Industries	83-2-00244
C87/71	Tsoulalas, J. May 12, 1987	CR Industries	83-8-01169
C87/72	Tsoulalas, J. May 12, 1987	CR Industries	86-10-01332
C87/73	Watson, J. May 19, 1987	Coberly & Associates	85-8-01066
C87/74	Watson, J. May 19, 1987	Lloyd's Electronics Int'l	85-9-01174
C87/75	Carman, J. May 19, 1987	Lange U.S.A., Inc.	85-8-01140, etc.
C87/76	Carman, J. May 20, 1987	Beracus-Amersil, Inc.	80-7-01138
C87/77	DiCarlo, J. May 28, 1987	Ross Trading Co.	84-2-00175
C87/78	Re, C.J. June 6, 1987	Syntex Laboratories, Inc.	85-6-00820

ED CLASSIFICATION DECISIONS

ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
Item No. and rate	Item No. and rate		
	Item 692.27 or 692.32 Various rates	Agreed statement of facts	Illaine Speedi-Sleeves (exclusive of cup portion)
	Item 692.27 or 692.32 Various rates	Agreed statement of facts	Illaine Speedi-Sleeves (exclusive of cup portion)
	Item 692.27 or 692.32 Various rates	Agreed statement of facts	Illaine Speedi-Sleeves (exclusive of cup portion)
Item 712.49 7.5% or 15.6% Various rates	Item 712.49 7.5% 6.8%	Agreed statement of facts	San Francisco Laser Inspection Instruments
Item 685.24, 685.50, and A584.62 8.2%, 5.9%, and duty-free	Item 688.43 and 578.50 4.5% or 4.2%	Agreed statement of facts	Los Angeles New York Timekeeping radio or radio cassette portion of solid-state digital AM/FM timekeeping radios or radio/ cassettes and telephones
Item 700.57 37.5%	Item 774.50 or 7.3% 6.9%	Agreed statement of facts	New York Ski Boot liners
Item 540.67 25%	Item 540.41 7% Item 540.11 7.5%	Eeracus-Amersil, Inc. v. U.S., 795 F.2d 1575	New York Newark Honosil, Herasil, etc.
Item 206.98 5.1%	Item A207.00 Free of duty	Agreed statement of facts	Los Angeles Oak toilet seats with hardware
Item 662.35 7.1%	Item 709.45 4.2%	Agreed statement of facts	San Francisco Controlled dosage nasal spray devices

U.S. COURT OF INTERNATIONAL TRADE

ABSTRACTED CLASSIFICATION DECISIONS

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	
				Item No. and rate	Item No. and rate
C87/79	Re, C.J. June 6, 1987	Syntex Laboratories, Inc.	86-10-01398	Item 662.35 7.6%	Item 70 4.4%
C87/80	Re, C.J. June 6, 1987	Syntex Laboratories, Inc.	86-1-00124	Item 662.35 6.7%	Item 70 4.0%
C87/81	Re, C.J. June 6, 1987	Syntex Laboratories, Inc.	86-4-00430	Item 662.35 7.1%	Item 70 4.2%
C87/82	Re, C.J. June 6, 1987	Syntex Laboratories, Inc.	86-5-00552	Item 662.35 6.7%	Item 70 4.0%
C87/83	Re, C.J. June 6, 1987	Syntex Laboratories, Inc.	86-6-00749	Item 662.35 6.7%	Item 70 4.0%
C87/84	Re, C.J. June 6, 1987	Syntex Laboratories, Inc.	86-6-00750	Item 662.35 6.7%	Item 70 4.0%

DECISIONS — Continued

HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
No. and rate		
709.45 6	Agreed statement of facts	New York Controlled dosage nasal spray devices
709.45 6	Agreed statement of facts	San Francisco Controlled dosage nasal spray devices
709.45 6	Agreed statement of facts	San Francisco Controlled dosage nasal spray devices
709.45 6	Agreed statement of facts	San Francisco Controlled dosage nasal spray devices
709.45 6	Agreed statement of facts	San Francisco Controlled dosage nasal spray devices
709.45 6	Agreed statement of facts	San Francisco Controlled dosage nasal spray devices

ABSTRACTED V

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION
V87/205	Re, C.J. May 27, 1987	Nichimen Co.	73-7-01761	Export value
V87/206	Watson, J. May 27, 1987	Amerex Trading Corp.	73-12-03484	Export value
V87/207	Watson, J. May 27, 1987	Express Forwarding & Storage Co.	273518A, etc.	Export value
V87/208	Watson, J. May 27, 1987	Fred Roberts Co.	296046A, etc.	Export value
V87/209	Watson, J. May 27, 1987	Mercury Radio & Battery Corp.	R63/4003, etc.	Export value
V87/210	Watson, J. May 27, 1987	Mitsui & Co.	R65/10934	Export value
V87/211	Watson, J. May 27, 1987	Montgomery Ward & Co.	R62/656, etc.	Export value
V87/212	Watson, J. May 27, 1987	Neico Corp.	R67/16816	Export value
V87/213	Watson, J. May 27, 1987	Overseas Mdee. Services	R63/13801, etc.	Export value
V87/214	Watson, J. May 27, 1987	Trans Ocean Import Co.	R65/9483, etc.	Export value
V87/215	Watson, J. May 27, 1987	Western Importing Co.	R65/17012	Export value
V87/216	Watson, J. May 27, 1987	W. G. Carroll	R64/9752	Export value

VALUATION DECISIONS

HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
Appraised values shown on entry papers less additions included to reflect currency revaluation	Agreed statement of facts	New York Not stated
Appraised values shown on entry papers less additions included to reflect currency revaluation	Agreed statement of facts	New York Not stated
F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Binoculars
Appraised values less 7.5% thereof	Agreed statement of facts	Houston Porcelain-ware
F.o.b. unit prices plus 20% of difference between f.o.b. unit prices and appraised values	Agreed statement of facts	San Francisco Radios & parts
F.o.b. unit prices plus 20% of difference between f.o.b. unit prices and appraised values	Agreed statement of facts	Los Angeles Radios & parts
F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Los Angeles Wool rugs
Appraised values less 7.5% thereof	Agreed statement of facts	Los Angeles Sewing machine heads
Appraised unit value less 7.5% thereof, net packed	Agreed statement of facts	Longview Chinaware
F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Portland Rugs
Appraised unit values less 7.5% thereof, net pkd.	Agreed statement of facts	Los Angeles Radios & parts
F.o.b. unit prices plus 20% of difference between f.o.b. unit prices and appraised values	Agreed statement of facts	Atlanta Radios & parts

Appeals to the U.S. Court of Appeals for the Federal Circuit

Burroughs Corp. v. United States, 11 CIT —, Slip Op. 87-50, *appeal docketed*, No. 87-1404 (Fed. Cir. June 18, 1987).

Nissho-Iwai American Corp. v. United States, 11 CIT —, Slip Op. 87-38, *appeal docketed*, No. 87-1388 (Fed. Cir. June 9, 1987).

Decisions of the U.S. Court of Appeals for the Federal Circuit

Timken Co. v. United States, 11 CIT —, Slip Op. 87-45, *dismissed*, Nos. 87-1324 & 87-1325 (Fed. Cir. May 21, 1987).

Nature's Farm Products, Inc. v. United States, 11 CIT —, Slip Op. 86-108, *aff'd*, No. 87-1114 (Fed. Cir. June 2, 1987).

East Chilliwack Fruit Growers v. United States, 11 CIT —, Slip Op. 87-16, *stipulation of voluntary dismissal*, No. 87-1277 (June 8, 1987).

Index

Customs Bulletin and Decisions
Vol. 21, No. 29, July 22, 1987

U.S. Customs Service

Treasury Decisions

	T.D. No.	Page
Customs Forms, elimination of various certain information collection requirements; parts 4, 6, 10, 18, 19, 54, 123, 141, 143, 144, and 145, CR amended (Correction).....	87-75	9
Harbor maintenance fee; parts 4, 24, 146, and 148, CR amended (Clarifying Amendment)	87-44	1

Proposed Rulemaking

	Page
Duty-free status for products imported from U.S. insular possessions.....	13

U.S. Court of International Trade

Slip Opinions

	Slip Op. No.	Page
Cabot Corp. v. United States	87-71	21

Abstracted Decisions

	Page
Classification.....	25
Valuation.....	27

CAFC-Related Decisions/Appeals

	Page
Appeals to the CAFC	29
Decisions of the CAFC.....	29



